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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF OREGON
13

14 In re

15 Wall to Wall Tile & Stone, LLC (TIN 9732),
Wall to Wall Tile & Stone-Oregon LLC
16 (TIN 1863), and Wall to Wall Tile & Stone-
Idaho LLC (TIN 94310),

17 Debtors.
18
19

Case No. 19-32600-dwh11

LEAD CASE

(Jointly Administered with Case Nos. 19-
32599-dwh11 and 19-32603-dwh11)

**REPLY BY COSMOS IN SUPPORT OF
ITS MOTION UNDER SECTIONS 542(e)
AND 1103(c)(2)**

Related to Doc 107

20 COMES NOW Cosmos Granite (West), LLC (“Cosmos”), and replies in support of its
21 motion for an order under 11 U.S.C. §§ 542(e) and 1103(c)(2) (“Motion”) authorizing it to
22 maintain and to provide Debtors and the Official Committee of Unsecured Creditors
23 (“Committee”) with access to documents relating to Debtors’ property or financial affairs that
24 Cosmos obtained during discovery in state court litigation that Cosmos had loaded onto a
25 © *Relativity* electronic discovery document review platform (collectively, “Documents”).
26

1 1. Debtors' response is strange. Debtors do not dispute that the Documents relate to
2 the Debtors' property and financial affairs or that it is in the best interest of the estate to maintain
3 the Documents. Yet, Debtors do not want Cosmos to turnover the Documents in accordance
4 with Section 542(e). Instead, Debtors want Cosmos, pursuant to the State Court's Protective
5 Order, and probably in violation of the automatic stay of Section 362(a)(3), to destroy the
6 Documents.

7 2. Debtors do not dispute that there are approximately 53,000 Documents, of about
8 103,000 pages on the © *Relativity* platform, and that the Documents include financial statements,
9 emails, bill payment records, invoices, receipts, purchase orders, and QuickBooks print outs
10 (such as accounts payable/unpaid bills, and cost of goods sold).

11 3. Debtors do not dispute that the © *Relativity* platform has an extremely robust
12 search functionality, and that the Documents are securely stored and can be easily located and
13 viewed, and searched, filtered, reviewed and categorized.

14 4. Although Debtors claim that the State Court Litigation "ended" on with entry of
15 the Judgment on July 2, 2019, which they claim triggered the 60 day clock for Cosmos to destroy
16 or return the Documents, Debtors do not dispute that they filed bankruptcy invoking the
17 automatic stay before the 60 days ran or that the parties to the State Court Lawsuit filed a
18 "Certificate of Settlement Without Dismissal" that expressly provides that "the parties
19 contemplate that the final dismissal of this action will be appropriate as of July 30, 2020," which
20 is nearly a year from now.

21 5. The Bankruptcy Code, especially its provisions for the automatic stay (Section
22 362) and for turnover (Section 542), controls what happens to the Documents, and the
23 Bankruptcy Code does not sanction the destruction of the Documents. The Debtors do not
24 explain how or why the State Court Protective Order changes or overrides this.

25 6. Debtors do not deny the applicability to the Documents of Section 542(e), which
26 provides:

1 Subject to any applicable privilege, after notice and a
2 hearing, the court may order an attorney, accountant, or other
3 person that holds recorded information, including books,
4 documents, records, and papers, relating to the debtor's property or
5 financial affairs, to turn over or disclose such recorded information
6 to the trustee.

7 7. Debtors do not deny that the Court's granting of the Motion would ensure that the
8 Documents are not destroyed or lost, but instead would make the Documents available to
9 Debtors and their professionals, the Committee and its professionals, and any trustee appointed
10 in this case.

11 8. Debtors do not deny that the Committee is entitled under 11 U.S.C. 1103(c)(2) to
12 "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the
13 operation of the debtor's business and the desirability of the continuance of such business, and
14 any other matter relevant to the case or to the formulation of the plan," and Debtors do not deny
15 that the Documents bear directly on this investigation.

16 9. The Documents should not be destroyed. Instead, pursuant to Section 542(e),
17 they should be preserved by Cosmos on the © *Relativity* platform and, pursuant to Section
18 1103(c)(2), made available to Debtors and the Committee.

19 **RELIEF REQUESTED**

20 WHEREFORE, Cosmos respectfully states that it is in the best interests of the estate and
21 the creditors for the Court to grant the Motion to protect and preserve the Documents.

22 DATED this 13th day of September, 2019.

23 FOX ROTHSCHILD LLP

24 By: /s/ Joseph E. Shickich, Jr.
25 Joseph E. Shickich, Jr. WSBA #8751
26 Michael A. Sweet, CAB #184345
Wendy E. Lyon, OSB #162408
Attorneys for Cosmos Granite (West), LLC

1 **CERTIFICATE OF SERVICE**

2 Veronica I. Magda declares:

3 1. I am an employee of Fox Rothschild LLP, which represents Cosmos Granite
4 (West), LLC. I am over the age of 18 and am competent to make this Declaration.

5 2. On September 13, 2019, I electronically filed the RESPONSE BY COSMOS IN
6 SUPPORT OF ITS MOTION UNDER SECTIONS 542(e) AND 1103(c)(2).

7 3. Also, on September 13, 2019, I caused copies of the forgoing document to be sent
8 via U.S. Mail – First Class to the following:

9 Tyler Kruckenberg
10 28700 NE Lewisville Hwy
Battle Ground, WA 98604

11 ODR Bkcy.
12 955 Center St NE
Salem, OR 97301-2555

13 4. It is my understanding that the CM/ECF System will send notifications of this
14 filing to all parties listed in this case to receive notice electronically.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is
16 true and correct.

17 DATED this 13th day of September, 2019 at Seattle, Washington.

18 /s/ Veronica Magda
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